

HONORABLE THOMAS O. RICE

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District Defendants

UNITED STATES DISTRICT COURT
FOR THE ESTERN DISTRICT OF WASHINGTON

I.V., a minor child; and APRIL OLIVARES and
FERNANDO OLIVARES VARGAS, parents of
I.V.,

Plaintiffs,

vs.

Y.A.F., a minor child, MARIA M. PEREZ
FLORES, as guardian of Y.A.F., WENATCHEE
SCHOOL DISTRICT NO. 246, a political
subdivision; TAUNYA BROWN, individually and
in her capacity as an official of Orchard Middle
School and/or Wenatchee School District;
JEREMY WHEATLEY, individually and in his
capacity as an official of Orchard Middle School
and/or Wenatchee School District; RONDA
BRENDER individually and in her capacity as an
official of Orchard Middle School and/or
Wenatchee School District; KELLI OTTLEY,
individually and in her capacity as an official of
Orchard Middle School and/or Wenatchee School
District; ELLEN McIRVIN, individually and in her
capacity as an official of Orchard Middle School
and/or Wenatchee School District,

Defendants.

Case No. 2:17-cv-00118-TOR

ANSWER TO COMPLAINT FOR
DAMAGES OF WENATCHEE
SCHOOL DISTRICT DEFENDANTS

1 COME NOW Defendants WENATCHEE SCHOOL DISTRICT, Taunya
2 Brown, Jeremy Wheatley, Ronda Brender, Kelli Ottley, and Ellen McIrvin
3 (collectively “WSD” or “Answering Defendants”), by and through their attorney
4 of record, Michael E. McFarland, Jr., of Evans, Craven & Lackie, P.S., and enter
5 this Answer to Plaintiffs’ Complaint as follows:
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9 **I. JURISDICTION**

10 1. Answering Defendants admit that jurisdiction and venue are proper.
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12 **II. PARTIES**

13 2. Answering Defendants admit that Plaintiff I.V. is a minor child.
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15 3. The first sentence of Paragraph 3 contains a legal conclusion to
16 which no response is necessary. Answering Defendants admit the remaining
17 allegations of the paragraph.
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19 4. Answering Defendants are without sufficient information to admit
20 or deny the allegations of Paragraph 4 and therefore deny the same.
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22 5. Answering Defendants are without sufficient information to admit
23 or deny the allegations of Paragraph 5 and therefore deny the same.
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25 6. Answering Defendants admit Defendant Y.A.F. is a minor child.
26 The second sentence of the paragraph contains a legal conclusion to which no
27 response is necessary. Answering Defendants admit the remaining allegations
28 contained in the paragraph regarding Y.A.F.’s
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1 school attendance. Answering Defendants are without sufficient information to
2 admit or deny Y.A.F.'s residence and therefore deny the same.
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4 7. Answering Defendants are without sufficient information to admit
5 or deny the allegations of Paragraph 7 and therefore deny the same.
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7 8. Answering Defendants admit that Wenatchee School District is a
8 public school district in the state of Washington. The remainder of Paragraph 8
9 contains legal conclusions to which no response is required. To the extent a
10 response is deemed necessary, Answering Defendants deny all allegations of
11 liability.
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14 9. Answering Defendants admit that the individual defendants are
15 residents of Washington and were employed by Wenatchee School District and
16 were acting in furtherance of their duties at all times herein. The remaining
17 allegations constitute legal conclusions to which no response is deemed
18 necessary. To the extent a response is deemed necessary, Answering Defendants
19 deny all allegations of liability.
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24 **III. VENUE AND ADMINISTRATIVE PREFILING CONDITIONS**

25 10. Answering Defendants admit that venue is proper in this Court and
26 that Plaintiffs have complied with the applicable pre-filing requirements.
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IV. OPERATIVE FACTS

11. The allegations of Paragraph 11 constitute legal conclusions to which no response is deemed necessary. To the extent a response is deemed necessary, Answering Defendants deny all allegations of liability.

12. Answering Defendants are without sufficient information to admit or deny the allegations of the first sentence and therefore deny the same. Answering Defendants deny the allegations contained in the second sentence of the paragraph. Answering Defendants are without sufficient information to admit or deny the remaining allegations contained in the paragraph and therefore deny the same.

13. Answering Defendants are without sufficient information to admit or deny the allegations contained in the paragraph and therefore deny the same.

14. Answering Defendants are without sufficient information to admit or deny the allegations contained in the first sentence of the paragraph and therefore deny the same. The second sentence of the paragraph constitutes a legal conclusion to which no response is necessary. Answering Defendants deny the remaining allegations of this paragraph.

15. Answering Defendants are without sufficient information to admit or deny whether the identified acts took place and therefore deny the same.

1 Answering Defendants deny all allegations that Defendants were aware of the
2 identified acts.
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- 4 • Answering Defendants are without sufficient information to admit
5 or deny the allegations regarding the alleged events of September
6 2013 and therefore deny the same.
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- 8 • Answering Defendants are without sufficient information to admit
9 or deny the allegations regarding the alleged events occurring
10 during the 2014 school year and therefore deny the same.
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- 12 • Answering Defendants are without sufficient information to admit
13 or deny the allegations regarding the alleged events of December
14 2014 and therefore deny the same.
15
- 16 • Answering Defendants are without sufficient information to admit
17 or deny the allegations regarding the alleged actions of Ms. Olivares
18 and therefore deny the same.
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- 20 • Answering Defendants are without sufficient information to admit
21 or deny the allegations regarding the alleged events of January 29,
22 2015, and therefore deny the same.
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- 24 • Answering Defendants are without sufficient information to admit
25 or deny the allegations regarding the alleged events of January 30,
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2015, and therefore deny the same.

- Answering Defendants are without sufficient information to admit or deny the allegations regarding the alleged questioning of I.V. regarding his weight loss and repeated bullying and assault and therefore deny the same.
- Answering Defendants deny the allegations regarding Ms. Olivares contacting the school counselor and that Ms. Brender said she would ask other students to identify the bully.
- As this allegation is premised upon the allegation contained in the immediately preceding paragraph, Answering Defendants deny the allegation that the bully was not located or identified by the OMS staff and I.V. continued to suffer at the hands of Y.A.F.
- Answering Defendants are without sufficient information to admit or deny the allegations regarding I.V.'s diagnosis of SMA syndrome, and allegations of other conditions and therefore deny the same.
- Answering Defendants are without sufficient information to admit or deny the allegations regarding I.V.'s anorexia and therefore deny the same.

- 1 • Answering Defendants are without sufficient information to admit
2 or deny the allegations regarding I.V.'s treatment at Children's
3 Hospital and therefore deny the same.
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- 5 • Answering Defendants are without sufficient information to admit
6 or deny the allegations regarding the events of Fall 2015 and
7 therefore deny the same.
8
- 9 • Answering Defendants admit that on January 4, 2016, Ms. Olivares
10 met with Ms. Brown, the principal at OMS and the name of the
11 bully was disclosed to OMS. Answering Defendants deny the
12 remainder of this paragraph.
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- 14 • Answering Defendants are without sufficient information to admit
15 or deny whether Ms. Olivares called the police and made a report
16 and therefore deny the same. Answering Defendants admit that
17 Y.A.F. was arrested on or about January 5, 2016.
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- 19 • Answering Defendants admit the police investigation revealed the
20 existence of video evidence. Answering Defendants are without
21 sufficient information to admit or deny the remainder of the
22 paragraph and therefore deny the same.
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- 24 • Answering Defendants admit that on January 19, 2016, an Order of
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Protection was signed by a Chelan County Superior Court Judge.

- Answering Defendants admit that at some point in January 2016, Ms. Olivares had a phone conversation with Defendant Brown regarding the existence of an Order of Protection and that Ms. Brown advised Ms. Olivares of Ms. Brown's need to obtain a copy of the Order.
- Answering Defendants admit that at some point around the time alleged (January 29, 2016), Ms. Brown left a message for Ms. Olivares requesting a copy of the Order of Protection.
- Answering Defendants admit that around the time alleged (February 1, 2016), Ms. Brenner and Ms. Brown met with Ms. Olivares and reviewed the Order of Protection. Answering Defendants are without sufficient information to admit or deny the remaining allegations of this paragraph and therefore deny the same.
- Answering Defendants admit that subsequent to the meeting identified in the preceding paragraph, Ms. Olivares contacted Ms. Brown and reported that Y.A.F. had threatened I.V. Answering Defendants deny the remaining allegations contained in this paragraph.

- 1 • Answering Defendants deny the allegations regarding what was
2 “ultimately determined.”
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- 4 • Answering Defendants admit that around the time alleged
5 (February 4, 2016), Ms. Olivares contacted Mark Helm to discuss
6 the Order of Protection. Answering Defendants deny all remaining
7 allegations contained in this paragraph.
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- 9 • Answering Defendants deny the allegations regarding events on
10 February 21, 2016.
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- 12 • Answering Defendants admit that I.V. was a freshman at Wenatchee
13 High School during the 2016-2017 school year and that Y.A.F.
14 attends Westside High School.
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- 16 • Answering Defendants admit that on or about the date alleged
17 (August 30, 2016), it was reported to Wenatchee School District
18 that Y.A.F. had gone onto the Wenatchee High School campus.
19 Answering Defendants deny all remaining allegations contained in
20 this paragraph.
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- 22 • Answering Defendants are without sufficient information to admit
23 or deny the allegations of continued bullying and harassment and
24 that I.V. attempted to end his life in October, 2016 and therefore
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1 deny the same.

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- 3 • Answering Defendants are without sufficient information to admit
- 4 or deny the allegations regarding emotional stress and flashbacks
- 5 and that I.V. is suffering a relapse of anorexia and hospitalization
- 6 and therefore deny the same.
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9 **V. FIRST CAUSE OF ACTION:**

10 **DISCRIMINATION ON THE BASIS OF GENDER**

11 **IN VIOLATION OF 20 U.S.C. §1681 (TITLE IX)**

12 16. Answering Defendants reallege all previous responses as set forth in

13 Paragraphs 1 through 15 herein.

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15 17. Paragraph 17 constitutes legal conclusions to which no response is

16 deemed necessary. To the extent a response is deemed necessary, Answering

17 Defendants deny all allegations of liability.

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19 18. Paragraph 18 constitutes legal conclusions to which no response is

20 deemed necessary. To the extent a response is deemed necessary, Answering

21 Defendants deny all allegations of liability.

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23 19. The first sentence of Paragraph 19 constitutes legal conclusions to

24 which no response is deemed necessary. To the extent a response is deemed

25 necessary, Answering Defendants deny all allegations of liability. Answering

26 Defendants deny all remaining allegations contained in this paragraph.

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1 20. The first sentence of Paragraph 20 constitutes legal conclusions to
2 which no response is deemed necessary. To the extent a response is deemed
3 necessary, Answering Defendants deny all allegations of liability. Answering
4 Defendants deny all remaining allegations contained in this paragraph.
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7 **VI. SECOND CAUSE OF ACTION:**
8 **VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. §1983**

9 21. Answering Defendants reallege all previous responses as set forth in
10 Paragraphs 1 through 20 herein.
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12 22. The first two sentences of Paragraph 22 constitute legal conclusions
13 to which no response is deemed necessary. To the extent a response is deemed
14 necessary, Answering Defendants deny all allegations of liability. Answering
15 Defendants deny all remaining allegations contained in this paragraph.
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18 23. Answering Defendants deny all allegations contained in this
19 paragraph.
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21 **VII. THIRD CAUSE OF ACTION:**
22 **NEGLIGENCE**

23 24. Answering Defendants reallege all previous responses as set forth in
24 Paragraphs 1 through 23 herein.
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27 25. The first two sentences of Paragraph 25 constitute legal conclusions
28 to which no response is deemed necessary. To the extent a response is deemed
29 necessary, Answering Defendants deny all
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1 allegations of liability. Answering Defendants deny the allegations contained in
2 the last sentence of this paragraph.
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4 26. Paragraph 26 contains legal conclusions to which no response is
5 deemed necessary. To the extent a response is deemed necessary, Answering
6 Defendants deny all allegations of liability.
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8 27. Answering Defendants deny all allegations contained in this
9 paragraph.
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11 **VIII. DAMAGES**

12 28. Answering Defendants reallege all previous responses as set forth in
13 Paragraphs 1 through 27 herein.
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15 29. Answering Defendants deny all allegations of liability, as well as
16 the existence, nature and extent of Plaintiffs' claimed injuries and damages.
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18 30. Answering Defendants deny all allegations of liability, as well as
19 the existence, nature and extent of Plaintiffs' claimed injuries and damages.
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21 **IX. JURY DEMAND**

22 31. Answering Defendants join in the request for a jury trial.
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24 **X. PRAYER**

25 Answering Defendants deny all allegations that these Answering
26 Defendants are liable for any of the damages claimed by Plaintiffs and further
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1 deny that Plaintiffs are otherwise entitled to any relief from these Answering
2 Defendants.
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4 * * *

5 These Answering Defendants specifically deny all allegations of
6 Plaintiffs' Complaint for Damages that were not admitted herein or a lack of
7 knowledge claimed.
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10 **AFFIRMATIVE DEFENSES**
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12 Pursuant to the requirements of F.R.C.P. 12, without the benefit of having
13 conducted any formal discovery in this case, by way of affirmative defenses, and
14 without admitting any allegations previously denied, WSD asserts the following:
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- 16 1. Plaintiffs have failed to state a claim against one or more Defendant.
- 17 2. The individual Defendants are entitled to a finding of qualified
18 immunity.
19
- 20 3. Plaintiffs' claimed injuries and damages were caused by the
21 intentional acts of Y.A.F. and as such Answering Defendants are
22 entitled to a *Tegman/Rollins* jury instruction at trial.
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- 24 4. As alleged in Plaintiffs' Complaint, Plaintiffs' claimed injuries and
25 damages were caused by the negligent conduct of Y.A.F. and/or
26 Maria M. Perez Flores.
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1 DATED this 12th day of June, 2017.

2 EVANS, CRAVEN & LACKIE, P.S.

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5 By: s/ Michael E. McFarland, Jr.
6 Michael E. McFarland, Jr., #23000
7 Attorneys for Wenatchee School District
8 And School District Defendants
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CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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